# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**Cr.Appeal No. 164 of 1999**

**Date of Decision**: April 4, 2006. .

State of H.P. …Appellant.

**Versus.**

Dinesh Kumar & ors. .. Respondents.

***Coram:***

***The Hon'ble Mr. Justice Deepak Gupta, Judge.***

***Whether approved for Reporting?***

**For the Appellant(s):** **Mr. Rajan Dewan, Additional Advocate General.**

**For the Respondent(s):** **Mr. T.S.Chauhan, Advocate, for respondents No.1 3 to 6.**
**Mr. Vinod Gupta, Advocate, for respondent No.2.**

**Deepak Gupta, J**.

This appeal by the State is directed against the judgment of the Judicial Magistrate Ist Class, Bilaspur in case No.2/3 of 1997/93 whereby he has acquitted the accused of the charges under Sections 41 and 42 of the Indian Forest Act.

The prosecution case in brief is that on 28.3.1993 at about 12.30 mid-night ASI Puran Chand (PW10), ASI Ranjha Ram (PW9), Constable Ishwar Singh, Constable Raj Kumar, Constable Ashwani Kumar and Constable Bhag Singh (PW7) were on patrolling duty. They had laid a Naka at Beri for checking of the vehicles. They apprehended truck No.HPK-5117 being driven by accused Chamel Singh coming

from Barmana towards Ghagas. Six other persons were also travelling in the truck. When the truck was checked 62 sleepers of Deodar wood were found in the said truck. The said timber was without permit and did not bear any hammer mark. None of the accused could produce any permit with regard to the timber. The timber was seized vide recovery memo Ext. PW7/A. FIR Ex.PB was lodged and investigation conducted. After the investigation, the accused were charged for having committed offences under Section 41 & 42 of the Indian Forest Act. They pleaded not guilty and claimed trial. The prosecution examined as many as ten witnesses in support of its case. Hence the present appeal.

I have heard Shri Rajan Dewan learned Additional Advocate General for the State-appellant and S/shri T.S.Chauhan and Vinod Gupta, learned counsel for the respondents-accused.

There can be no manner of doubt that the truck was apprehended and 62 sleepers of timber were found in the truck. However, the prosecution has failed to prove that the accused were guilty of any offence. The driver was alleged to be Chamel Singh. As far as the other accused were concerned, there is not even an iota of evidence that they had anything to do with the timber. There is no allegation or evidence to show that these accused persons had either cut the timber or that the timber was being carried in the truck at their instance. The mere fact that these six persons were travelling in the truck along with some

alleged illicitly felled timber is not sufficient to hold them guilty of any offence.

The prosecution examined Shyam Lal as PW1. He turned hostile and according to him, he does not know anything about the case. Though he has been cross-examined by the prosecution, he has not supported the prosecution case. According to him, his blank signatures were obtained by the police. Similarly (PW2) Naresh Kumar has turned hostile and not at all supported the prosecution case.

PW3 Hari Om Sharma only proves that 62 sleepers were unloaded from the truck No.HPK-5117 in his presence and taken into possession vide memo Ex.PW3/A. He has admitted that he only went to the police station on 30.3.1993 two days after the incident and by that time the truck had already been unloaded.

PW4 is only a formal witness. PW6 Hoshiar Singh who was the other independent witness has also turned hostile. He has not at all supported the prosecution version. Constable Bhag Singh was examined as PW7. He does state that the truck was stopped and found to be loaded with 62 sleepers of Deodar wood. According to him, this timber was taken into possession vide memo Ex.PW7/A. He also states that the documents of the truck along with its key were taken into possession. These were produced by the driver Chamel Singh. In cross-examination, he has admitted in the statement (Ex.PW7/B) recorded under Section 161 Cr.PC the name of the driver was not mentioned. He also admits that he did not identify the truck driver.

The evidence of PW8 is not relevant. PWs 9 and 10 are the investigating officers. They have supported the prosecution case.

As already discussed above, no evidence has been led with regard to the other six accused who were passengers in the truck to link them with the illicit felling or transportation of timber. As far as driver Chamel Singh is concerned, even PW7 Bhag Singh admits that his name does not find mention in the statement recorded under Section 161 Cr.P.C. None of the independent witnesses supported the prosecution case. In fact there is doubt with regard to the presence of Chamel Singh driver. The evidence of the prosecution is not categorical that he alone was the driver of the truck.

Keeping in view of the above discussion, I feel that the learned trial Court has rightly acquitted the accused . There is no infirmity in the judgment of the trial Court. The appeal is dismissed. Bail bonds are discharged.

April 4, 2006. ( Deepak Gupta ), J.
s.